

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JOSEPH DONALD SMITH,
#850381

§

VS.

§

CIVIL ACTION NO. 9:09cv10

DIRECTOR, TDCJ-CID

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Judith K. Guthrie. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case.

Petitioner filed objections to the Report. Petitioner's objections reiterate the contentions in his Petition, Motion for Summary Judgment, and Brief.

Petitioner also objects to the Magistrate Judge's issuing a Report and Recommendation in this case, a Lufkin Division case, because he mistakenly believes that the Magistrate Judge is in Marshall, not Lufkin. This case was referred to the Magistrate Judge on January 12, 2009. The Magistrate Judge has the authority to issue a Report and Recommendation in a Lufkin Division case referred to her.

Petitioner also objects to the Magistrate Judge's issuing a Report and Recommendation before receiving an answer from Respondent. The Rules Governing Section 2254 Cases provide for the orderly progression of habeas corpus proceedings. Rule 4 provides for a preliminary

consideration of the petition by a court. If a petition is not dismissed at that juncture, then Rule 5 provides that an answer and state records shall be filed. The Magistrate Judge issued a Report and Recommendation after a preliminary consideration of the petition and was not required to order an answer.

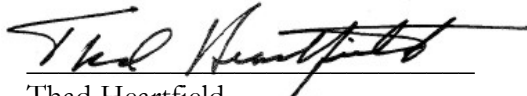
This Court has made a *de novo* review of Petitioner's objections and determined that they lack merit. This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

ORDERS, ADJUDGES, and DECREES that this action is **DISMISSED WITH PREJUDICE**;

ORDERS that Petitioner is **DENIED** a certificate of appealability; and

ORDERS that all motions not previously ruled on are denied.

SIGNED this the **18** day of **February, 2009**.


Thad Heartfield
United States District Judge